

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

M. W.,

Claimant,

and

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. 2011100506

PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California, heard this matter on December 19, 2011, in Corte Madera, California,

Lisa Rosene, L.C.S.W., Chief, Regional Center Services for the Golden Gate Regional Center represented Golden Gate Regional Center (the service agency).

E.W.P, claimant's sister, represented M.W. (claimant).

On December 19, 2011, the parties submitted the matter for decision and the record closed.

ISSUE

Did service agency err by way of its denial of claimant's request for curb-to-curb transportation services by an enhanced and more desirable transportation service when a generic resource in the form of a paratransit service is available and more cost effective?

Claimant's Contentions

Claimant contends that her transportation to and from a day program, which provides her with an employment opportunity, is better served by R&D Transportation Services (R&D), a service broker that hires "On the Move" buses to transport residents of the facility where complainant resides to sites for day programs. R&D transports other residents at

claimant's assisted-living residence and the time of pickup by R&D adheres to a consistent schedule so that claimant can timely arrive at her day program and other training program. In contrast, claimant contends, the paratransit service known as Whistle Stop has had irregular pickup times that have inconvenienced her. Such inconvenience to claimant results from the paratransit's arrival times, which were too irregular and too early in the morning so that she has had to rush during early morning hours when her house mates are not required to be prepared as early during mornings as claimant. Moreover, claimant contends that the use of the Whistle Stop paratransit services, rather than R&D bus service, singles claimant out from other residents in a discriminatory manner.

FACTUAL FINDINGS

1. Claimant is a 50-year-old woman as she has a date of birth of August 24, 1961.

2. Claimant has been a regional center consumer for many years as she has a diagnosis of mental retardation.

For an unknown period of time, Mountain Valley Regional Center addressed claimant's statutorily authorized needs and requirements. When claimant moved her residence she came into the service agency's service area effective September 1, 2010.

3. Under an Individual Program Plan (IPP) for claimant, which was crafted with Mountain Valley Regional Center on August 25, 2010, service agency became obligated to reimburse claimant for transportation extended to her by Whistle Stop Paratransit service.

After the case transfer from Mountain Valley Regional Center, an IPP, dated August 27, 2010, service agency agreed to "funding of [claimant's] transportation . . . [five] passes [each] month for the period of 9/1/10 -10/31/10." Then by an IPP Addendum, dated October 28, 2010, service agency noted a request "to fund [claimant's] transportation/family member [five coupon] books [each] month, effective 11/1/10 -9/3-/13."

4. In accordance with the IPP Addendum, dated October 28, 2010, the current arrangement for claimant's transportation needs was described as "[claimant] uses Whistle Stop to get to and from her day program. [Claimant] uses [five] books a month, each book is \$20. [Service agency] will reimburse [claimant] for her transportation expense."

5. On approximately July 29, 2011, claimant commenced a 21-day per month out-of-home respite living arrangement with the Cedar Brown Drive facility, a Level Two Home. Claimant's part-time home within Cedar Brown Drive is a shared living arrangement that is furnished through Lifehouse, which provides her with comprehensive supported living services. Under an IPP Addendum, dated July 26, 2011, service agency funds claimant's residential placement at the Cedars Brown Drive facility for the period of July 29, 2011 through September 13, 2013.

6. Through her day program, applicant attends Cedars, Hands and Earth for training where she has an employment opportunity. Her enrollment at Cedars, Hands and Earth has her categorized as a part time participant. She participates in training involving weaving, gardening and kitchen work.

To reach the training site, claimant must travel by bus to the program from her residence at the Cedar Brown Drive facility because walking between the sites entails traversing a cemetery, which is considered to be an unsafe “environmental barrier.”

7. Claimant offered an exhibit that showed the arrival times for Whistle Stop paratransit for her morning pick-up. The document shows times from July 19, 2011, until December 9, 2011. Rather than supporting claimant’s contentions the document supports service agency’s view that the paratransit service has improved its responsiveness to claimant.

The document shows that during July 2011, Whistle Stop arrived at early as 7:09 a.m. for claimant’s pickup. And there was a late pickup at 8:17 a.m. during July 2011. During the months of August, September, October and November 2011 Whistle Stop was shown to have a wide range of pick up times for claimant. But in December 2011, after receiving directives from a responsible person with regard to claimant’s need to reach her training program, Whistle Stop’s arrival time improved to encompass a much narrower time frame between 7:29 a.m. and 7:56 a.m.

She is not grievously inconvenienced by the recent efforts of Whistle Stop to meet claimant during morning hours.

8. No evidence was offered to demonstrate that R& D can be deemed to be the only appropriate transportation provider in claimant’s area. Rather the paratransit service by Whistle Stop, having improved its pickup time for claimant, was shown by service agency to meet the needs of claimant.

9. Claimant cannot be found to have experienced insurmountable problems with the paratransit. And the evidence does not support claimant’s argument, through her sister, that the paratransit service has not been adequate to meet her needs because of the inconsistency of her wait period. And there is nothing to show that the paratransit transportation service is not safe for claimant.

10. Among claimant’s contentions is an argument that “[a]ll other residents utilize [R&D]. To single her out to use Whistle Stop [the paratransit service]. . . is not inclusive nor equal.” However, the facts do not support claimant’s argument. Rather, when M.W. moved to her current residence, she had been using paratransit services for a period of time. There is no evidence that M.W. has been singled out for disparate treatment. Rather the funding of the transportation arrangement was geared to service agency’s effort to “individualize” the provision of services to claimant in accordance with the IPP process.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Developmental Disabilities Act¹, the State of California accepts responsibility for persons with developmental disabilities. It is the expressed intent of the Legislature that sufficiently complete services and supports be provided to meet the needs of a person with developmental disabilities and to support their integration into the mainstream life of the community. It is also the legislative intent that a consumer of services and, where appropriate, her family members such as a close sister, shall have a leadership role in service design.² The Lanterman Act gives the consumer the right to make choices in the way she spends her time, including education, employment, leisure, the pursuit of her personal future and program planning and implementation. The consumer and her family should participate in decisions relating to the provision of services relating to these rights.³

Section 4512, subdivision (b), provides in pertinent part:

Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual... or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost effectiveness of each option.

¹ Welfare and Institutions Code section 4500 et seq. All statutory references are to the California Welfare and Institutions Code unless otherwise specified.

² Code section 4501.

³ Code sections 4501 and 4502.

Services and supports listed in the IPP may include “day care, physical, occupational and speech therapy . . . *and transportation services* necessary to ensure delivery of services to persons with developmental disabilities.”⁴ (Emphasis added.)

The IPP and the services and supports provided by service agency should center on the individual and her family and take into account their needs and preferences.⁵ It is the responsibility of service agency to secure the services and supports that meet the needs of the consumer as determined in the IPP.⁶ The services and supports shall be flexible and individually tailored to the consumer and, where appropriate, her family.⁷ In choosing a service provider service agency must consider, among other things, the consumer’s choice of providers.⁸

2. Notwithstanding the above-cited critical controlling concepts, the Lanterman Act is replete with guidance and dictates pertaining to cost-effectiveness in the delivery of services to consumers. And important to the principle of cost-effectiveness is the requirement for use of generic resources as opposed to enhanced or premier service providers.

Code section 4646.4, sets out, in part:

(a) Effective September 1, 2008, *regional centers shall ensure*, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center’s purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

⁴ Code section 4512, subdivision (b).

⁵ Code Section 4646, subdivision (a).

⁶ Section 4648, subdivision (a)(1).

⁷ Section 4648, subdivision (a)(2).

⁸ Section 4648, subdivision (a)(6)(E).

(2) *Utilization of generic services and supports* when appropriate.
(Emphasis added.)

Welfare and Institutions Code section 4659, subdivision (a), states:

(a) Except as otherwise provided in subdivision (b) or (c), *the regional center shall identify and pursue all possible sources of funding* for consumers receiving regional center services. These sources shall include, but not limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the

Welfare and Institutions Code section 4648, subdivision (a)(8), states:

(8) *Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."*

Welfare and Institutions Code section 4648, subdivision (a)(6), provides in pertinent part:

(6) The *regional center shall consider all of the following* when selecting a provider of consumer services and supports:

(A) A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individual program plan.

(B) A provider's success in achieving the objectives set forth in the individual program plan.

[¶] . . . [¶]

(D) *The cost of providing services or supports of comparable quality* by different providers, if available.

A regional center is not required to provide all of the services that a client may require. Regional centers are subject to certain fiscal constraints and limits on their budgets and contracts with the Department of Developmental Services. (Welf. & Instit. Code, §§ 4651 and 4791.

Whether a claimant is entitled to a particular service depends upon a consideration of all relevant circumstances. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 231-34.)

The service agency must be fiscally responsible to meet its budget and to provide services equitably among consumers.

3. The service agency is obligated to provide transportation service that meet claimant's needs. Service agency's personnel have diligently pursued the provision of transportation options for claimant. There is no indication that service agency has neglected the concerns of claimant or her sister, rather the record shows that service agency is committed to dutifully assuring the protection of public funds from expensive outlays of scarce funds for the enhanced provision of services. Though claimant's sister questions the diligence of the service agency in pursuing and providing a better transportation option, the evidence does not support this position. And though claimant argues that paratransit service is not appropriate, the evidence is to the contrary.

Service agency has provided transportation service that meets claimant's needs.

4. The Lanterman Act mandates service agency to secure services and supports needed to achieve the stated objectives of M.W.'s IPP.⁹ In choosing a transportation provider, service agency and the consumer shall consider the provider's ability to deliver quality services that can accomplish all or part of the consumer's IPP requirement regarding transportation.¹⁰

In this matter, the objectives of the Lanterman Act have been faithfully met by service agency.

⁹ Section 4648, subdivision (a).

¹⁰ Section 4648, subdivision (a)(6)(A).

ORDER

The request of M.W.'s request for enhanced transportation in the way of curb-to-curb services through other than the paratransit service now funded by service agency is denied

DATED: January 4, 2012

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision. All parties are bound by this Decision. Any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days.